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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,938	12/15/2003	Joseph John Fatula JR.	SJ0920030067US1	3722
45216	7590	08/07/2007		
Kunzler & McKenzie 8 EAST BROADWAY SUITE 600 SALT LAKE CITY, UT 84111			EXAMINER TAYLOR, NICHOLAS R	
			ART UNIT 2141	PAPER NUMBER
			MAIL DATE 08/07/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/735,938

Applicant(s)

FATULA, JOSEPH JOHN

Examiner

Nicholas R. Taylor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 10-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 20-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/15/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-30 were subject to a restriction requirement. Claims 1-9 and 20-30 were elected. The elected claims have been examined and are rejected.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-9 and 20-30, drawn to a method of policy implementation and network regulation based on network trigger events, classified in class 709, subclass 218.
 - II. Claims 10-19, drawn to a method of notification-based monitoring of local network events by a global autonomic management system, classified in class 709, subclass 224.
3. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility as a method of policy implementation and network regulation, classified in class 709, subclass 218. Subcombination II has separate utility as a method of notification-based

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monitoring of local network events by a global autonomic management system, classified in class 709, subclass 224. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Restriction is proper because these inventions are distinct, as the inventions have acquired a separate status in the art in view of their different classification and the inventions require a different field of search (see MPEP § 808.02).

4. During a telephone conversation with David McKenzie on July 25th, 2007, a provisional election was made with right to traverse reserved to prosecute the invention of Group I, claims 1-9 and 20-30. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claim 30 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Specifically, the claimed language would reasonably be interpreted by one of ordinary skill in the art as a system of "software per se" and thus failing to fall within a statutory category of invention, because applicant's disclosure contains no explicit and deliberate definition for the term "means." In the context of the disclosure and claims in question, one of ordinary skill would reasonably interpret the "means" as a software application. As such, the system of "means" alone is not a machine, and it is clearly not a process, manufacture, or composition of matter. Thus, the claimed limitations are not limited to statutory subject matter and are therefore nonstatutory.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

9. Claims 1-30 are rejected under 35 U.S.C. 102(a) as being anticipated by Chase et al. ("Dynamic virtual clusters in a grid site manager").

10. As per claims 1, 20, 24, and 30, Chase teaches an autonomic management apparatus for autonomic management of system resources on a grid computing system, (Chase, abstract and overview sections)

the apparatus comprising:

a monitor module configured to monitor the grid computing system for a trigger event; (Chase, section 3.2, see monitoring performed by virtual cluster management module)

a policy module configured to access one of a plurality of system policies, each of the plurality of system policies corresponding to an operational control parameter of a system resource of the grid computing system; and a regulation module configured to autonomically regulate the system resource in response to a recognized trigger event according to one of the plurality of system policies (Chase, section 4, see e.g., the resize function that applies policies to allocate and reallocate system resources, where the functionality is also performed based on a trigger event).

11. As per claims 2 and 25, Chase teaches the system further wherein the trigger event comprises one of an initiation trigger event, a regulation trigger event, and a prediction trigger event (Chase, section 4, see e.g., the resize functionality).

12. As per claim 3, Chase teaches the system further wherein the operational control parameter comprises a command to regulate the system resource (Chase, section 4, see e.g., the resize functionality).

13. As per claim 4, Chase teaches the system further wherein the system resource comprises one of a client processor capacity, a client storage capacity, and a client memory capacity allocated to the grid computing system (Chase, page 5, where the resource comprises the ability to run an executable job).

14. As per claims 5, 21, and 26, Chase teaches the system further wherein the regulation module comprises a reservation module configured to reserve the system resource for a grid system operation (Chase, overview, see, e.g., the resource reservation of page 3).

15. As per claims 6, 22, and 27, Chase teaches the system further wherein the regulation module comprises a termination module configured to terminate a reservation of a system resource for a grid system operation (Chase, page 6, e.g., the priority based

termination based on grid system operation; see also the termination in live trace experiment in section 5.2).

16. As per claims 7 and 28, Chase teaches the system further wherein the regulation module comprises an arbitration module configured to arbitrate conflicting grid system operations according to an arbitration policy (Chase, section 3.3 resource negotiation module).

17. As per claims 8 and 29, Chase teaches the system further wherein the regulation module comprises a profile module configured to store a system resource profile, the system resource profile identifying a system resource of a client, the system resource allocated by the client to the grid computing system (Chase, see section 4 and 5.2 where resource profiles are maintained for all of the member client nodes).

18. As per claim 9, Chase teaches the system further wherein the plurality of system policies comprises at least one of a system prediction policy, a system regulation policy, and a system termination policy (Chase, section 4).

19. As per claim 23, Chase teaches a method for autonomic management of grid system resources on a grid computing system, (Chase, abstract and overview sections) the method comprising:

monitoring the grid computing system for a trigger event, the trigger event comprising one of an initiation trigger event, a regulation trigger event, and a prediction trigger event; (Chase, section 4, where the resource allocation is based on a trigger event)

accessing one of a plurality of system policies, each of the plurality of system policies corresponding to an operational control parameter of a system resource of the grid computing system, the operational control parameter comprising a command to regulate the system resource; regulating the system resource in response to a recognized trigger event according to one of the plurality of system policies and, (Chase, section 4, see e.g., the resource management applied by the VCM on page 5 that changes operational control parameters to regulate system resources based on a plurality of system policies)

the system resource comprising one of a client processor capacity, a client storage capacity, and a client memory capacity allocated to the grid computing system; (Chase, page 5, where the resource comprises the ability to run an executable job)

storing a system resource profile, the system resource profile identifying a system resource of a client, the system resource allocated by the client to the grid computing system (Chase, see section 4 and 5.2 where resource profiles are maintained for all of the member client nodes).

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. This includes:

U.S. Patent No. 6,463,454, which describes a method of resource management and load distribution on a networked environment;

U.S. Patent No. 7,240,015, which describes a method of policy enforcement and resource management in a virtual network; and

U.S. PGPub 2003/0154238, which describes a method of centrally managed distributed storage that are maintained by policy-based resource allocation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Taylor whose telephone number is (571) 272-3889. The examiner can normally be reached on Monday-Friday, 8:00am to 5:30pm, with alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NT 7-30-07

Nicholas Taylor
Examiner
Art Unit 2141


JASON CARDONE
SUPERVISORY PATENT EXAMINER